<u>REMARKS</u>

Claims 1-4, 6, 7 and 9-36 are currently pending in the subject application and are presently under consideration. The Examiner has noted that claim 36 contains allowable subject matter. Claims 1-3, 10-13, 16, 18, 19, 21, 22, 24, 25, 29, 33 and 34 have been amended herein, and claims 6, 7, 9, 14, 15, 17, 27, 30 and 31 have been cancelled. A listing of all claims can be found on pp. 2-7 above.

Applicant's representative thanks Examiner Won for the courtesies extended during the telephonic interview held January 5, 2009. During the interview, applicant's representative discussed rejections of the independent claims under 35 U.S.C. § 103 with the Examiner. While no final agreement was reached, the Examiner suggested incorporating the allowable elements of claim 36 into the independent claims (*e.g.*, incorporating claims 6-7 into independent claim 1).

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I.   Rejection of Claims 1-4, 6, 7 and 35 Under 35 U.S.C. §103(a)

Claims 1-4, 6, 7 and 35 stand rejected under 35 U.S.C. § 103(a) over Matsumoto, *et al.* (US 6,678,720) in view of Cannon, *et al.* (US 6,498,935) and Marker, Jr. (US 4,802,220). It is respectfully submitted that this rejection should be withdrawn for at least the following reasons. Matsumoto, *et al.*, Cannon, *et al.*, and Marker, Jr., alone or in combination, do not teach or suggest each and every feature set forth in the subject claims.

> A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning. See *KSR v. Teleflex*, 550 U.S. ___, 127 S. Ct. 1727 (2007) citing Graham v. John Deere Co. of Kansas City, 383 U. S. 1, 36 (warning against a "temptation to read into the prior art the teachings of the invention in issue" and instructing courts to "'guard against slipping into the use of hindsight'" (*quoting Monroe Auto Equipment Co. v. Heckethorn Mfg. & Supply Co.*, 332 F. 2d 406, 412 (CA6 1964))).

The claimed subject matter relates to a system that facilitates efficient and secure access to files or content between users or between computers (*e.g.* accessing files from one's work computer from their laptop computer at a remote location). To this end, independent claim 1, as amended, recites, "A system that *facilitates file sharing between at least any two computers,*

comprising: *an authentication component* that verifies a user's identity based in part on user-based input to determine whether the user has access rights to the file; an ***analysis component*** that identifies and determines whether any communication channels are available to share the file between the at least two computers based in part on one or more characteristics of the file; and a ***channel controller component*** that selects at least one communication channel that is determined to be available to transport the file based in part upon analysis of the one or more characteristics of the file . . ." Matsumoto, *et al.* fails to teach or suggest the aforementioned features.

First, Matsumoto, *et al.* is silent with regard to ***file sharing between at least any two computers***. Instead, Matsumoto, *et al.* relates to communication *via* a chat system (*i.e.* IRC). *See* col. 1, lines 11-13. This chat system allows users to send real time messages to a plurality of users on the chat system, even when a direct connection to the chat system is not possible. *See* col. 2, lines 33-37. For example, the system gives a user the ability to send a chat message from a fax machine or a telephone so that users connected to the chat system can access the message through, for example, the WWW. *See* col. 2, lines 54-67 – col. 3, lines 1-9. While Matsumoto, *et al.* provides technology for using a chat system to promote smooth communication, Matsumoto fails to teach or suggest ***file sharing between at least any two computers***. In failing to teach or suggest such file sharing, Matsumoto, *et al.* fails to teach or suggest each of the components that facilitate file sharing.

Additionally, Matsumoto, *et al.* fails to teach or suggest ***an analysis component that identifies and determines whether any communication channels are available to share the file between the at least two computers based in part on one or more characteristics of the file,*** *comprising at least one of file type, file size or file security level.* Instead, Matsumoto, *et al.* teaches a target switching means, which as part of a messaging device receives a designation of a virtual space or a chat device. *See* col. 3, lines 57-59; col. 4, 56-67. While the target switching means can direct users to where the message is stored, the target switching means cannot ***determine whether any communication channels are available to share the file between the at least two computers based in part on one or more characteristics of the file***.

Further, the Examiner concedes that Matsumoto, *et al.* is silent with regard to *a **channel controller component that selects at least one communication channel that is determined to be available to transport the file based in part upon analysis of the one or more characteristics of***

the file. *See* O.A. p. 3, para. 2. Therefore, Matsumoto, *et al.* clearly fails to teach or suggest each and every element of independent claim 1.

Cannon, *et al.*, which relates to cordless telephones, fails to remedy the aforementioned deficiencies of Matsumoto, *et al.* First, Cannon, *et al.* is silent with regard to *file sharing between at least any two computers*. Instead, Cannon, *et al.* merely teaches a technique for avoiding channel interference for avoiding channel interference with improved channel selection for each of a separate digital cordless telephone. *See* col. 1, lines 10-12. This technique allows a base unit to select an RF channel based on an identity of non-matching or unauthorized digital cordless telephones operating within transmission range of the base unit. *See* col. 4, lines 3-8. Cannon, *et al.* does not teach or suggest *file sharing between at least any two computers*. In failing to teach or suggest such file sharing, Cannon, *et al.* fails to teach or suggest each of the components that facilitate file sharing. Furthermore, Cannon, *et al.* is silent with regard to *an analysis component that identifies and determines whether any communication channels are available to share the file between the at least two computers based in part on one or more characteristics of the file*, *comprising at least one of file type, file size or file security level*. The cordless phone system disclosed by Cannon, *et al.* is unable to share files between computers.

Additionally, Cannon, *et al.* is silent with regard to *a channel controller component that selects at least one communication channel that is determined to be available to transport the file based in part upon analysis of the one or more characteristics of the file*. Cannon, *et al.* merely teaches that RF channels used by the base unit are selected based on received identification information (*i.e.* a security code) associated with non-matching or unauthorized digital cordless telephones. *See* col. 4, lines 10-14. The selection taught by Cannon, *et al.* cannot select a communication channel that is determined to be available to *transport a file based in part upon analysis of the one or more characteristics of the file* (*e.g. at least one of file type, file size or file security level*). Therefore, Cannon, *et al.* fails to teach or suggest each and every element of independent claim 1. Additionally, Cannon, *et al.* in combination with Matsumoto, *et al.* fails to teach or suggest each and every element of independent claim 1.

Marker, Jr., which relates to message splitting and multi-channel transmission of separate message portions, fails to remedy the aforementioned deficiencies of Matsumoto, *et al.* and Cannon, *et al.* First, Marker, Jr., is silent with regard to *file sharing between at least any two computers*. Instead, Marker, Jr., relates to encryption and recombination of information

messages communicated in split portions over direct communication channels. *See* col. 1, lines 16-19. These communication channels are unable to facilitate file sharing between at least two computers. Additionally, Marker, Jr., *et al.* fails to teach or suggest both *an analysis component that identifies and determines whether any communication channels are available to share the file between the at least two computers based in part on one or more characteristics of the file, comprising at least one of file type, file size or file security level* and *a channel controller component that selects at least one communication channel that is determined to be available to transport the file based in part upon analysis of the one or more characteristics of the file.* Rather, Marker, Jr., *et al.* merely teaches a multi-channel network where messages are split and recombined to provide for secure communications. *See* col. 2, lines 4-11. This network does not include a component that determines whether channels are available to share a file between at least two computers based at least in part on one or more characteristics of the file, nor does it include a component that selects at least one communication channel that is determined to be able to transport the file based in part upon such analysis of the one or more characteristics of the file. Therefore, Marker, Jr., *et al.* fails to teach or suggest each and every element of independent claim 1. Additionally, Marker, Jr., *et al.* in combination with Matsumoto, *et al.* and Cannon, *et al.* fail to teach or suggest each and every element of independent claim 1.

As amended, independent claim 1 further recites, "*the two or more chunks are encrypted in part by the module on the sender's communication system and decrypted in part by module on the recipient's communication system and the two or more chunks are identified with special keys in subject line or email headers.*" As the Examiner states with regard to claim 36, "The prior art of record does not disclose, teach or suggest neither singly or in combination the claimed limitation of 'wherein the two or more chunks are encrypted in part by the module on the sender's communication system and decrypted in part by the module on the recipient's system and the two or more chunks are identified with special keys in the subject line or email headers.'" *See* O.A. pp. 17-18, "*Allowable Subject Matter.*" Accordingly, independent claim 1 is clearly patentable over the cited references. Likewise, claims 2-4, 6 and 7, which depend from independent claim 1, are also patentable for at least the same reasons.

Additionally, claim 2 recites, "a *virtual share space* that is *located on a primary computer and accessed using at least one communication channel* and *stores at least one file to be shared with one or more secondary computers.*" Matsumoto, *et al.*, Cannon, *et al.*, and

Marker, Jr., *et al.*, alone or in combination, fail to teach or suggest such novel features. Cannon, *et al.* and Marker, Jr., *et al.* are silent with regard to a ***virtual share space***. Matsumoto, *et al.* fails to teach or suggest ***a virtual share space*** that is ***located on a primary computer and accessed using at least one communication channel*** and ***stores at least one file to be shared with at least one or more secondary computers***. Rather, Matsumoto merely describes a virtual space that is set up on a network to send and receive text messages in real time. *See* col. 1, lines 20-23. In this sense, Matsumoto's virtual space is merely a type of channel and is not a virtual share space as defined by claim 2. Accordingly, claim 2 is clearly patentable over Matsumoto, *et al.*, Cannon, *et al.*, and Marker, Jr., *et al.* and should be allowed.

Furthermore, the Examiner has cited motivation to combine Matsumoto, *et al.* and Cannon, *et al.* and motivation to combine Matsumoto, *et al.* and Marker, Jr., *et al. See* O.A. p. 3, para. 4; O.A. p. 4, para. 3. However, the Examiner fails to cite any motivation for a person of ordinary skill in the art to combine Matsumoto, *et al.*, Cannon, *et al.*, and Marker, Jr., *et al.* Under 35 U.S.C. § 103 where the examiner has relied on the teachings of several references, the test is whether or not the references viewed individually and collectively would have suggested the claimed invention to the person possessing ordinary skill in the art. It is to be noted, however, that citing references which merely indicated that isolated elements and/or features recited in the claims are known is not a sufficient basis for concluding that the combination of claimed elements would have been obvious. That is to say, there should be something in the reference or a convincing line of reasoning in the answer suggesting the desirability of combining the references in such a manner as to arrive at the claimed invention... [I]t would not have been obvious to modify the reference ... without using the patent application's] claims as a guide. It is to be noted that simplicity and hindsight are not proper criteria for resolving the issue of obviousness." *Ex parte Hiyamizu*, 10 USPQ2d 1393 (BPAI 1988). Therefore, for at least the reasons as described *supra*, independent claim 1 is clearly patentable. Claims 2-4, 6 and 7, which depend from independent claim 1, are also patentable for at least the reasons independent claim 1 is patentable.

In view of at least the foregoing, it is readily apparent that Matsumoto, *et al.*, Cannon, *et al.*, and Marker, Jr., *et al.*, taken alone or in combination, fail to teach or suggest each and every element of the subject claims. Therefore, it is respectfully submitted that this rejection be withdrawn and the subject claims allowed.

II.   Rejection of Claims 10-13 and 17-23 Under 35 U.S.C. §103(a)

Claims 10-13 and 17-23 stand rejected under 35 U.S.C. § 103(a) over Matsumoto, *et al.* in view of Cannon, *et al.* Claim 17 has been cancelled. It is respectfully submitted that this rejection should be withdrawn with regard to claims 10-13 and 18-23 for at least the following reasons. Matsumoto, *et al.* and Cannon, *et al.*, and alone or in combination, do not teach or suggest each and every feature set forth in the subject claims.

Independent claim 10 recites, "A system that *facilitates file sharing* comprising: a *content analysis component* that at least one file for which sharing is desired, the analysis is based on at least one of file type, file content, file size, or file security level; a *channel analysis component* that assesses at least one of a security level threshold, a file size threshold, availability or compatibility of a plurality of channels and determines the most appropriate channel to employ to share the at least one file; and a *channel controller component* that selects at least one communication channel that is determined to be available to transport the ~~content~~ at least one file based at least in part upon channel analysis and activates the selected channel." For at least the reasons described *supra* with respect to claim 1, claim 10 is patentable over Matsumoto, *et al.* and Cannon, *et al.* Furthermore, claims 11-13 and 18-23, which depend from claim 10, are also patentable for at least the reasons stated above.

Additionally, claim 11 is patentable for at least the following reasons. Claim 11 recites, "the at least one file is located in one or more *virtual share spaces*." For at least the reasons described with respect to claim 2 above, claim 11 is patentable over Matsumoto, *et al.* and Cannon, *et al.*

Likewise, claim 18 is patentable for at least the same reasons as claim 2 is patentable. Claim 18 recites, "The system of claim 10 is *located on a first computer that originates the file to be shared and on at least a second computer that desires access to such content*." For at least the reasons described *supra* with respect to claim 2, Matsumoto, *et al.* and Cannon, *et al.* are silent with regard to a system for file sharing across two computers.

Furthermore, claim 19, which depends from claim 18, is patentable over Matsumoto, *et al.* and Cannon, *et al.* Claim 19 recites, "*the first computer is located at a first location and the second computer is located at a second location and both computers correspond to one user*." Both Matsumoto, *et al.* and Cannon, *et al.* are silent with regard to this feature.

In view of at least the foregoing, it is readily apparent that Matsumoto, *et al.* and Cannon, *et al.*, taken alone or in combination, fail to teach or suggest each and every element of the subject claims. Therefore, it is respectfully submitted that this rejection be withdrawn and the subject claims allowed.

III.   Rejection of Claim 9 Under 35 U.S.C. §103(a)

Claim 9 stands rejected under 35 U.S.C. § 103(a) over Matsumoto, *et al.* in view of Cannon, *et al.* and Marker, Jr., further in view of Eberle, *et al.* (US 7,061,929). It is respectfully submitted that this rejection should be withdrawn because claim 9 has been cancelled, as indicated above.

IV.   Rejection of Claims 14-16 Under 35 U.S.C. §103(a)

Claims 14-16 stand rejected under 35 U.S.C. § 103(a) over Matsumoto, *et al.* in view of Cannon, *et al.* and further in view of Eberle, *et al.* Claims 14 and 15 have been cancelled. It is respectfully submitted that this rejection should be withdrawn with regard to claim 16 for at least the following reasons. Matsumoto, *et al.*, Cannon, *et al.*, and Eberle, *et al.*, alone or in combination, do not teach or suggest each and every feature set forth in the subject claims.

Claim 16 depends from independent claim 10. As described above, Matsumoto, *et al.* and Cannon, *et al.* fail to teach or suggest each and every element of independent claim 10 for at least the reasons described with respect to independent claim 1. Eberle, *et al.*, which relates to a network accommodating high speed data transfers, fails to make up for the aforementioned deficiencies of Matsumoto, *et al.* and Cannon, *et al.*

Furthermore, Eberle, *et al.* fails to teach or suggest each and every element of claim 16. Claim 16 recites, "***one or more communication channels are deemed unavailable if they fail to satisfy the file size threshold.***" Eberle, *et al.* fails to teach or suggest a file size threshold and a communications channel that is deemed unavailable if it fails to satisfy the file size threshold. Instead, Eberle, *et al.* merely suggests utilizing a data packet size as a criterion for which packets are transmitted with a high degree of scheduling to ensure a high utilization of channel. *See* col. 6, lines 5-8. In no way does this data packet size teach, suggest, or even imply the features of claim 16. To this end, claim 16 is clearly patentable over Matsumoto, *et al.*, Cannon, *et al.* and Eberle, *et al.*

In view of at least the foregoing, it is readily apparent that Matsumoto, *et al.*, Cannon, *et al.*, and Eberle, *et al.*, taken alone or in combination, fail to teach or suggest each and every element of the subject claims. Therefore, it is respectfully submitted that this rejection be withdrawn and the subject claims allowed.

V.   Rejection of Claims 24-29 and 32-34 Under 35 U.S.C. §103(a)

Claims 24-29 and 32-34 stand rejected under 35 U.S.C. § 103(a) over Matsumoto, *et al.* in view of Eberle, *et al.* Claim 27 has been cancelled. It is respectfully submitted that this rejection should be withdrawn for at least the following reasons. Matsumoto, *et al.*, and Eberle, *et al.*, alone or in combination, do not teach or suggest each and every feature set forth in the subject claims.

Independent claim 24 recites, "A content-sharing and transport method comprising: ***creating one or more virtual share spaces on a primary computer to maintain content for sharing with other secondary computers***; ***receiving user-based input from a receiver in request to access content designated for sharing on the virtual share space***; authenticating the user-based input to confirm at least one of user identity or user access rights to the content; and ***selecting at least one communication channel to facilitate sharing with or transporting the content from the virtual share space to a secondary computer based at least in part on availability, analysis of the content, security threshold of the content and content size***." As described above with respect to claim 2, Matsumoto, *et al.* fails to teach or suggest ***creating one or more virtual share spaces on a primary computer to maintain content for sharing with other secondary computers***; and ***receiving user-based input from a receiver in request to access content designated for sharing on the virtual share space***. Additionally, as described *supra* with respect to claim 1, Matsumoto, *et al.* fails to teach or suggest ***selecting at least one communication channel to facilitate sharing with or transporting the content from the virtual share space to a secondary computer based at least in part on availability, analysis of the content, security threshold of the content and content size***. Eberle, *et al.*, which relates to a network accommodating high speed data transfer, fails to make up for the aforementioned deficiencies of Matsumoto, *et al.* Therefore, Matsumoto, *et al.* and Eberle, *et al.*, taken individually or in combination, fail to teach or suggest each and every element of the subject

claim. Accordingly, claim 24 is patentable over the cited art. Additionally, for at least the same reasons, claims 25, 26, 28, 29 and 32, which depend therefrom, are also patentable.

Claim 29, which depends from independent claim 24, is also patentable over Matsumoto, *et al.* and Eberle, *et al.* The subject claim recites, ". . . installing a module on a sender and recipient's communication system; dividing a large file into two or more smaller chunks, *wherein the two or more chunks are identified with special keys in subject line or email headers*; sending each chunk separately to the receiver; acknowledging receipt of each chunk before sending a subsequent chunk; assembling the two or more chunks to create a copy of the content; and *encrypting the two or more chunks before sending and decrypting before or during the assembling of the chunks*." As the Examiner states with regard to claim 36, "The prior art of record does not disclose, teach or suggest neither singly or in combination the claimed limitation of 'wherein the two or more chunks are encrypted in part by the module on the sender's communication system and decrypted in part by the module on the recipient's system and the two or more chunks are identified with special keys in the subject line or email headers.'" *See* O.A. pp. 17-18, "*Allowable Subject Matter*." Accordingly, claim 29 is patentable over the cited art.

Independent claim 33 recites, "A content-sharing system comprising: means for receiving user-based input in request to access content designated for sharing; means for *determining at least one communication channel to employ to facilitate sharing with or transporting the content from the virtual share space to another computer based at least in part on availability, analysis of the content, the content security and content size*; means for communicating between computers that divides a large file into two or more smaller chunks, whereby each chunk is sent separately and acknowledged upon receipt before a subsequent chunk is sent; means *for encrypting the two or more chunks*; means for *decrypting the two or more chunks*; and means for *identifying the two or more chunks with special keys in subject line or email headers*." As the Examiner states with regard to claim 36, "The prior art of record does not disclose, teach or suggest neither singly or in combination the claimed limitation of 'wherein the two or more chunks are encrypted in part by the module on the sender's communication system and decrypted in part by the module on the recipient's system and the two or more chunks are identified with special keys in the subject line or email headers.'" *See*

O.A. pp. 17-18, *"Allowable Subject Matter."* Thus, claim 33 is clearly patentable over the cited art.

Additionally, as described *supra* with regard to claim 24, Matsumoto, *et al.* and Eberle, *et al.*, taken alone or in combination, fail to teach or suggest **determining at least one communication channel to employ to facilitate sharing with or transporting the content from the virtual share space to another computer based at least in part on availability, analysis of the content, the content security and content size**. Accordingly, claim 33 is clearly patentable over the cited art.

Independent claim 34 recites, "A data packet adapted to be transmitted between two or more computer processes facilitating easier file sharing, the data packet comprising: information associated with **automatically determining at least one communication channel to employ to transport a file between two or more computers, the determination being based at least in part upon file size, analysis of the file, security level of the file and channel availability**." As described above with respect to claims 24 and 33, Matsumoto, *et al.* and Eberle, *et al.*, alone or in combination, fail to teach such novel features. Thus, claim 34 is clearly patentable.

In view of at least the foregoing, it is readily apparent that Matsumoto, *et al.* and Eberle, *et al.*, taken alone or in combination, fail to teach or suggest each and every element of the subject claims. Therefore, it is respectfully submitted that this rejection be withdrawn and the subject claims allowed.

VI.   Rejection of Claims 30 and 31 Under 35 U.S.C. §103(a)

Claims 30 and 31 stand rejected under 35 U.S.C. § 103(a) over Matsumoto, *et al.* in view Eberle, *et al.* and further in view of Marker, Jr. It is respectfully submitted that this rejection should be withdrawn because claims 30 and 31 have been cancelled.

CONCLUSION

The subject application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP627US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number below.

Respectfully submitted,

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